

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

United States Department of Housing
and Urban Development,

Plaintiff,

v.

Sandra S. Geller and
Morris M. Geller,

Defendants

HUDALJ 93-2054-PF
Decided: October 25, 1993

Sandra S. Geller and
Morris M. Geller,
Pro Se

Philip Kesaris, Esq.
For the Government

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

INITIAL DECISION

Statement of the Case

Plaintiff, the U.S. Department of Housing and Urban Development ("HUD") issued a Complaint seeking an assessment of \$1,360 and a civil penalty of \$5,000

against Defendants Sandra S. Geller and Morris M. Geller (collectively "Defendants") pursuant to the Program Frauds Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812 ("the Act"), and HUD's implementing regulations, 24 C.F.R. Part 28. The undated Complaint was sent by certified mail and received by Defendants on June 22, 1993. The Complaint notified the Defendants of their rights to request a hearing by filing answers, and that failure to answer the Complaint within 30 days would result in imposition of the maximum civil penalty without right to appeal. 24 C.F.R. § 28.13(b)(4). Defendants never filed answers. On August 13, 1993, this tribunal notified Defendants of its intent to issue an Initial Decision on or after September 20, 1993. The notice informed Defendant that the Initial Decision would assume the facts as alleged in HUD's Complaint as true, and if such facts establish liability, the Initial Decision would impose the maximum amount of penalties allowed under the Act. See 24 C.F.R. § 28.19(b)(c) and (d). Defendants have yet to answer or to demonstrate that any extraordinary circumstances have prevented them from filing an answer. See 24 C.F.R. § 28.19(d) and (e). Accordingly, this matter is ripe for decision.

Findings of Fact

1. Among other programs, HUD administers programs of rental assistance for low income families pursuant to section 8 of the U.S. Housing Act of 1937, 42 U.S.C. §. 1437f ("Section 8").

2. Defendants are individuals who currently reside at 18713 66th Avenue West, Lynnwood, Washington 98037. Defendants applied for and received Section 8 rental assistance from HUD for the time period from October 1991 through May 1992.

3. Jurisdiction in this matter is based upon 31 U.S.C. § 3803 and 24 C.F.R. Part 28.

4. Pursuant to Section 8, HUD administers a rental assistance program which assists lower income families obtain suitable housing in private accommodations. HUD pays private owner/landlords the difference between what the lower income family can afford and the approved rent for the housing unit. To

be eligible for rental assistance, the family's annual income must not exceed the income limit set by HUD--generally, 80% of the median annual income for families in the relevant geographic area. See 24 C.F.R. § 813.102, *Lower Income Family*.

5. In order to determine both threshold eligibility and the amount of rental assistance to be paid, HUD requires applicants to report all family assets, including real property owned and all family income. When an applicant owns real property but does not report rental income therefrom, HUD requires that an income be imputed based upon 5.5% of the assessed value of the rental property. This amount is then added to the applicant's other income and the regular computations are completed to arrive at an assistance payment amount. See HUD Handbook 4350.3 CHG-2, paras. 3-3 and 3-4 (Feb. 1986).

6. On September 6, 1991, Defendants signed and submitted an Application for Admission to the Elumwood Apartments, Cle Elum, Washington. On their application, Defendants indicated that their total assets consisted of a \$100 savings account. The family income portion of the Application for Admission indicated that defendant Sandra Geller was employed in retail sales and that defendant Morris Geller received a pension/social security. Defendants' signatures appeared immediately below the following Application Certification:

I/We certify that if selected to move into this project, the unit I/we occupy will be my/our only residence. I/we understand that the above information is being collected to determine my/our eligibility for Section 8 assistance. I/we authorize the owner to verify all information provided on this application and to contact previous or current landlords or other sources for credit and verification information which may be released to appropriate federal, state, or local agencies. I/we certify that the statements made on this application are true and complete to the best of my/our knowledge and belief. I/we understand that false statements or information are punishable under federal law.

7. On September 25, 1991, defendants signed and submitted to the owner/landlord Form HUD-50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures ("HUD-50059"). Defendants'

signatures appear at Part VIII of HUD-50059. Defendants indicated on HUD-50059, at Part III, that they had no assets and a combined income of \$9,012. At the top of HUD-50059 is the following statement: "Important: Read the instructions in Appendix 1 of Handbook 4350.3 before completing this form." Appendix 1 of Handbook 4350.3, in pertinent part, states as follows:

TENANT(S)' CERTIFICATION- I/We certify that the information in Parts II, III, and IV of this Form are true and complete to the best of my/our knowledge and belief. I/We understand that I/we can be fined up to \$10,000, or imprisoned up to five years, or lose the subsidy HUD pays and have my/our rent increased, if I/we furnish false or incomplete information.

* * *

WARNING TO OWNERS AND TENANTS- By signing in Part VIII of this Form, you have indicated that you ... are agreeing with the applicable Certification.

8. Based upon the Application For Admission and HUD-50059, the owner/landlord determined that Defendants' \$9,012 income qualified them for rental assistance from HUD as a lower income family.

9. The relevant family income limit set by HUD was \$10,750.

10. From October 1991 through May 1992, Defendants rented a unit at the Elumwood Apartments and received \$85 per month, or \$680 in total, in rental assistance from HUD.

11. Defendants knew or should have known that the asset information submitted by them on the Application for Admission and HUD-50059 was false.

12. The Application for Admission and HUD-50059 failed to include, as a family asset, a single family property deeded to Defendants on August 21, 1991. Defendants knew or should have known that this property, located at 18713 66th Avenue West, Lynnwood, Washington, had an assessed value of \$137,400 with no encumbrances. Had Defendants truthfully reported their ownership of this

property and its value on the Application for Admission and HUD-50059, they would have been ineligible for any rental assistance.

13. Defendants knew or should have known that the unit they rented at the Elumwood Apartments was not their only residence.

14. HUD overpaid \$85 in rental assistance each month, or \$680 in total, for the eight month period from October 1991 through May 1992. As a result of Defendants' false statement of family assets, Defendants received \$680 in eligible rental assistance during that period.

15. With respect to the Application for Admission and HUD-50059 signed and submitted by Defendants, Defendants knew or should have known that the family asset information contained therein was false, fictitious, or fraudulent.

16. Such a submission of a rental assistance application constitutes a false claim for payment because Defendants did not qualify for rental assistance from HUD.

Discussion

Section 3802(a)(1) of the Act provides that any person who makes a written statement to the Government that the person knows or has reason to know is false or fraudulent, including the omission of a material fact, and who causes a claim to be made, presented or submitted that includes or is supported by the false or fraudulent written statement is subject to an assessment in an amount of not more than twice the amount of the claim. Section 3802(a)(1) of the Act also provides a civil penalty of not more than \$5,000 for each claim. See *also* 24 C.F.R. § 28.5(a)(1) and (5).

The Application for Admission and HUD-50059 signed and submitted by Defendants constituted false or fictitious statements which resulted in Section 8 rent subsidy payments in the amount of \$680 being made to Defendants by HUD.

In light of the foregoing, Defendants are liable for an assessment of \$1,360, which is twice the amount of rental assistance overpayment made by HUD because of the false claim. 31 U.S.C. § 3802(a)(1) and 25 C.F.R. § 28.5(a)(5). Further Defendants are liable for a civil penalty of \$5,000 for the false claim submitted by Defendants. 31 U.S.C.

§ 3802(a)(1) and 24 C.F.R. § 28.5(a)(1).¹

DETERMINATION

Defendants' false statements on the Application for Admission and HUD-50059 violate 31 U.S.C. § 3802(a)(1) and 24 C.F.R. § 28(a). Accordingly, Defendant Sandra S. Geller and Defendant Morris M. Geller are jointly and severally liable for an assessment \$1,360 and a civil penalty of \$5,000.

SAMUEL A. CHAITOVITZ
Administrative Law Judge

¹ Although certain factors may be considered in determining the amount of penalties, see 24 C.F.R. § 28.61, Defendants' failure to file an answer requires the imposition of the maximum amount allowable under the Act. See 24 C.F.R. § 28.19.